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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/14/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF
INCOME TAX CENTRAL, KOLKATA 2
VS
M/S SATTAVA DEVELOPERS PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 5TH February, 2024.

Appearance :
Mr. Soumen Bhattacharjee, Adv.
..for appellant
Mr. Pratyush Jhunjhunwala, Adv.
...for respondent

The Court :- We have heard learned Counsel on either side.

It appears that there is a delay of 770 days in filing the appeal.

Though the explanation offered is not fully convincing, yet this being an appeal filed under Section 260A of the Income Tax Act, 1961, is required to examine whether any substantial questions of law arose for consideration. We exercise our discretion and condone the delay in filing the appeal.

This appeal filed by the revenue is directed against the order dated 16.4.2021 passed by the Income Tax Appellate Tribunal "A" Bench Kolkata (the Tribunal) in ITA No. 2418/Kol/299 for the assessment year 2009-2010.

The revenue has raised the following substantial questions of law for consideration:-

A) Whether the Learned Income Tax Appellate Tribunal committed substantial error in law by not considering that the Assessing Officer never formed an opinion regarding taxability of compensation in light of expressive provision of Section 28(1) of the Income Tax Act?

B) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally correct in holding that this is a clear case of change of opinion and hence the re-opening of assessment is bad in law but failed to consider that there is nothing in the original assessment order dated 08.12.2011 which indicates that the Assessing Officer has applied his mind and had provided as conscious opinion and no opinion was framed by the Assessing Officer in Original assessment order and therefore the change of opinion does not arise?

We have carefully perused the order passed by the learned Tribunal and we find that the factual finding recorded by the Commissioner of Income Tax (Appeals) could not be controverted by the department and the Tribunal has come to the factual conclusion that the reopening of the assessment is a clear case of change of opinion. Furthermore, there was no allegation that the assessee failed to fully and truly disclose all material facts required for the assessment. Thus, we find that the learned Tribunal was right in dismissing the appeal filed by the revenue and no grounds have been made to interfere with the said order.

Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the applications stand disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.